

STATE OF MICHIGAN  
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals  
Judges Jessica R. Cooper and Mark J. Cavanagh (Majority)  
and Judge Brian K. Zahra (Dissenting)

CASCO TOWNSHIP, COLUMBUS  
TOWNSHIP, PATRICIA ISELER and  
JAMES P. HOLK,

Plaintiffs/Counter-  
Defendants/Appellants,

vs.

CANDICE S. MILLER, MICHIGAN  
SECRETARY OF STATE, CHRISTOPHER  
M. THOMAS, DIRECTOR, BUREAU OF  
ELECTIONS, and CITY OF RICHMOND

Defendants/Appellees

and

WALTER K. WINKLE and PATRICIA A.  
WINKLE,

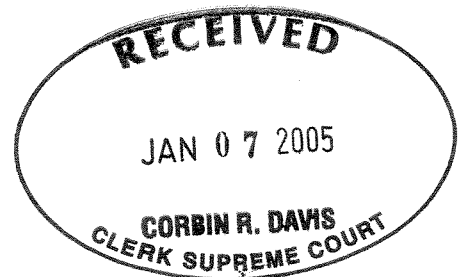
Intervening Defendants and  
Counter-Plaintiffs/Appellees.

Supreme Court Case No. 126210

Court of Appeals Case No. 244101

Ingham County Circuit Court Case  
No. 02-991-02

**AMICUS CURIAE BRIEF OF**  
**THE MICHIGAN MUNICIPAL**  
**LEAGUE**



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## **AUTHORITY TO FILE AMICUS BRIEF**

Amicus Curiae briefs may be filed upon the granting of a motion for leave to file an amicus brief under MCR 7.212.

**STATEMENT OF BASIS OF JURISDICTION**

Amicus Curiae adopts the statement of the basis of jurisdiction of Defendant/Appellee City of Richmond.

## STATEMENT OF INTEREST

This Amicus Curiae brief is submitted on behalf of The Michigan Municipal League due to the statewide importance of preserving the plain and ordinary meaning of words in the Home Rule Cities Act as historically interpreted by prior Supreme Court decisions. Plaintiff/Appellants are asserting that the language of Section 6 and several other sections of the Home Rule Cities Act ("HRCA") can be interpreted to permit all electors from each local government unit within the entire "district affected" to sign a single petition and vote collectively on a single question at a single election which includes all of the township units voting together. The Amicus Curiae asserts that the HRCA compels separate petitions must be submitted and separate elections held in each of the townships to which the detached property is being transferred to.

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort and whose membership is comprised of some 510 Michigan cities and villages. Among its members are 352 city and village members of the Michigan Municipal League Legal Defense Fund which the Michigan Municipal League operates through a Board of Directors. The purpose of the Legal Defense Fund is to represent the member cities and villages in litigation of statewide significance. This brief *Amicus Curiae* is authorized by the Board of Directors of the Legal Defense Fund whose membership includes:: The President and Executive Director of the Michigan Municipal League and the following attorneys who are officers and directors of the Michigan Association of Municipal Attorneys: William B. Beach, City Attorney, Rockwood; Randall Brown, City Attorney, Portage, Ruth Carter, City Attorney, Detroit; W. Peter Doren, City Attorney, Traverse City; Bonnie Hoff, City Attorney, Marquette; Andrew J. Mulder, City

Attorney, Holland; Clyde Robinson, City Attorney, Battle Creek; Debra A. Walling, City Attorney, Dearborn; and William C. Mathewson, General Counsel, Michigan Municipal League.

The interest of The Michigan Municipal League in this matter is direct and substantial because its member cities and villages will be directly affected by the decision of this Court. If decided adversely to its membership, this Court's decision will change the status of municipal boundary law in the State of Michigan.

## STATEMENT OF QUESTIONS INVOLVED

1. Did the Court of Appeals err in concluding that a single detachment petition and vote thereon cannot encompass territory to be detached to more than one township?

Plaintiffs-Appellants say	"Yes"
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Defendants-Appellees say	"No"
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Intervening Defendant-Appellees say	"No"
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The Circuit Court said	"No"
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The Court of Appeals said	"No"
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## **STATEMENT OF FACTS**

The Amicus Curiae adopts the complete statement of facts of Plaintiff/Appellants as correct.

## **ARGUMENT**

A DETACHMENT PETITION THAT COMBINES TWO OR MORE DISTRICTS TO BE AFFECTED CANNOT BE USED TO DETACH TERRITORY TO MORE THAN ONE TOWNSHIP BY ONE BALLOT QUESTION

### **Standard of Review**

This issue requires the Court to review interpretation of the language of the Home Rule Cities Act. The Court reviews questions of statutory interpretations *de novo*. *Mayor of Lansing v. Public Service Comm*, 470 Mich 154, 157; 680 NW2d 840 (2004).

### **Statutory Authority for Detachment**

The authority to detach property from a city is derived from Section 6 of the Home Rule Cities Act ("HRCA") being MCL 117.1 et seq. Section 6 provides, in pertinent part:

Cities may be incorporated or territory detached therefrom or added thereto, or consolidation made of two or more cities or villages into one city, or of a city and one or more villages into one city, or of one or more cities or villages together with additional territory not included within any incorporated city or village into one city, by proceedings originating by petition therefore signed by qualified electors residing within the cities, villages, or townships to be affected thereby, to a number not less than one percent of the population of the territory affected thereby according to the last preceding United States census MCL §117.6 (in pertinent part)

The petition in this case was initiated pursuant to section 11 of the Home Rule Cities Act which provides in part:

When the territory to be affected by any proposed...change is situated in more than 1 county the petition hereinbefore provided shall be addressed and presented to the secretary of state, with 1 or more affidavits...showing that the statements contained in said petition are true, that each signature affixed thereto is the genuine signature of a qualified elector residing in a city, village or township to be affected by the carrying out of the purposes of the petition and that not less than 25 of such signers reside in each city, village or township to be affected thereby. The secretary of state shall examine such petition and the affidavit...and if he shall find that the same conforms to the provisions of this act he shall so certify, and transmit a certified copy of said petition...to the clerk of each city, village or township to be affected by the carrying out of the purposes of such petition, together with his certificate as above provided, and a notice directing that

at the next general election occurring not less than 40 days thereafter the question of making the...change of boundaries petitioned for shall be submitted to the electors of the district to be affected,...If he shall find that said petition and the affidavit...do not conform to the provisions of this act he shall certify to that fact, and return said petition and affidavits to the person from whom they were received, together with such certificate. The several city, village and township clerks who shall receive from the secretary of state the copies and the certificated...shall give notice of the election to be held on the question of the proposed...change of boundaries as provided for in section 10 of this act. MCL 117.11

Section 11 states that the question of making the change of boundaries petitioned for shall be submitted to the electors of the “district to be affected.” This phrase is defined in subsection 9(1) of the Home Rule Cities Act, which states in part;

...The district to be affected by every such proposed...change in boundaries shall be deemed to be the whole of each city, village or township from which the territory is to be taken or to which territory is to be annexed...

The Townships’ claim that because the Legislature refers to a single petition in the act specifically as it relates to the “district effected”, which by definition is broadly defined to include multiple cities, villages and townships, the language allows for a single election to be held to detach territory from a city and transferred to multiple townships. Such a construction cannot be gleaned from the quoted language. Obviously, any annexation or detachment election will involve more than one municipality. Both the municipality losing the land and the municipality gaining the land will be affected and must vote on the proposed boundary change. Moreover, the Townships’ position seems to be, that if it is not explicitly prohibited by the HRCA, it must be allowed. Such a conclusion is not warranted under Michigan law.

#### **Rules of Statutory Construction.**

The author of *Sutherland Statutory Construction, 6<sup>th</sup> Edition*, Norman J. Seigler would not agree with the Township’s analysis. The use of a word in a statute in a singular form does not necessarily imply a singular use.

“Common usage in the English language does not scrupulously observe a difference between singular and plural word forms. This is especially true when speaking in the abstract, as in legislation prescribing a general rule for future application. In recognition of this, it is well established, by statute and by judicial decision, that legislative terms which are singular in form may apply to multiple subjects or objects. Sec. 47.34

“Singular and Plural Numbers,” p.374.

Michigan has adopted this interpretation of singular and plural form in MCL 8.3b:

Section 36: Number; Gender

Every word importing the singular number only may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number. *See* MCL §8.3b.

Plaintiff/Appellant Township’s assertion that the HRCA reference to a single petition in the singular form mandates them to use a single petition to propose multiple detachments to multiple townships is without basis. The word “petition” may “extend to and embrace “ more than one petition. The term “authority” in Freedom of Information Act (FOIA) provisions was interpreted to include the plural “authorities” by the court in *Scialfani v Domestic Violence Escape*, 417 Mich App. 260, 660 N.W.2d 97 (2003). In the case of *In re City of Detroit*, 261 Mich 278, 246 N.W. 29 (1927), the court said: “Words importing the singular number may extend to the plural number.”

This case involves separate and distinct proposals, each proposal concerns the detachment of territory from one city to one township. If there are multiple townships, each needs a separate proposal requiring a separate petition and separate election. The singular form of the word “petition,” within the context of the act, cannot be restricted the way proposed by Plaintiff/Appellant Townships.

The same analysis can be applied to the phrase “district to be affected,” thereby allowing for separate petitions to be signed by the qualified electors residing in the separate districts to be affected. This would be “more consonant with justice and with the principles of local self government which have been frequently enunciated by this court.” Cook v Board of County Canvassers, 190 Mich 149; 155 NW 1003 (1916).

There are no sections of the HRCA which expressly speak in terms of two or more townships acting together to pool their votes to detach property from a city. The Townships are not, therefore, entitled to rely upon the statute’s general usage of the singular or plural words to support their claim authorizing or bootstrapping the authority to pool their votes, especially in light of MCL §8.3(b)’s requirement that the plural may be limited to the singular.

**A Township’s Authority is Limited by the Constitution and Case Law.**

The Townships appear to be asserting that the HRCA does not expressly forbid multiple townships from utilizing a single petition and single election. However, a township’s authority is limited under Article 7, Section 17 of the Constitution: “Each organized township shall be a body corporate with powers and immunities provided by law.” Thus, it has often been held by the appellate courts of this state that townships have no inherent powers and possess only those limited powers which are expressly conferred upon them by state constitution or state statute or which are necessarily implied therefrom. Haneselman v Killeen, 419 Mich 168, 187, 351 NW2d 544 (1984); *See, also* National Steel Corp v Bates Township, 374 Mich 58, 63, 130 NW2d 882 (1964) “A township is not a sovereignty with inherent powers of government. It is a creature of statute and possesses only such powers as are expressly granted it by statute.” General language in a statute will not warrant a township in exercising powers extraterritorially. Baxter v Robertson, 57 Mich 127, 23 NW 711 (1885). Thus, a township cannot create authority simply by the absence of a prohibition.

**The HRCA Does Not Allow for Double Detachments.**

The election provision of the Home Rules Cities Act ("HRCA"), MCL §117.1, et seq, specifically provides:

[T]he question of making the proposed incorporation, consolidation or change of boundaries shall be submitted to the qualified electors of the district to be affected at the next general election. MCL §117.8 (in pertinent part). (Emphasis Supplied).

Here, the petitions at issue seek detachment of multiple distinct and separate territories to multiple and separate governmental entities, by a single petition, and provides for only one election by the voters of both or all the townships and the city even though two questions are necessarily implicated. This petition would allow the qualified electors of one township to vote on detachment of city property to another township, even though the electors of one township are not part "of the district to be affected" by such election. To permit the electors of these townships to vote in each others detachment election, represents a blatant violation of the emphasized language of §8 cited above and §6 cited below.

**Election Law**

Moreover, it is general rule of law that independent or unrelated propositions or questions referred to the electors must be submitted separately so that each may stand or fall on its own merits. 26 Am Jur 2d, Elections § 314, p 119. "A proposition stated on the ballot should not present a duplex issue, nor, in submitting questions to electors, should separate subjects, separate purposes or independent propositions be so combined that one may gather votes for the other." 8A Michigan Civil Jurisprudence, § 63, pp 87-88; *see also* Public Schools of Muskegon v Vander Laan, 211 Mich 85, 87, 178 NW 424 (1920) "Separate subjects, separate purposes, or independent propositions should not be combined so that one may gather votes for the other." To allow both detachments on one ballot would do violence to this principle as well as the

express language of §6. It is beyond dispute that the detachment of land in the two separate townships are separate subjects, separate purposes and independent propositions.

The residents of a township and the citizens of a city clearly have the right to determine whether property should be detached from the city to the township. The same can be said about the residents of another township and the city. However, the citizens of one township have no such right to determine whether the property in the city should be detached to another township. These are two separate issues which must be voted on separately within their own jurisdictions. In Baxter, supra, the Supreme Court held:

No person not living in the township has any voice in its affairs.  
No instance has ever been known in our history where a town or town representative has been allowed to exercise any governmental powers in another town. \* \* \* Such a power cannot be inferred.  
Id., p 23.

Yet, under the Townships' construction of the HRCA, non-residents of either township could and will determine the fate of the neighboring township. "There is no principle of law authorizing one township to bind another township in any way." Pierson Township v Town Board of Reynolds, 49 Mich 224, 225, 13 NW 525 (1882).

Furthermore, because in reality two separate questions are involved, it is impossible to determine if a "yes" vote by a city resident is a "yes" to both questions. Michigan election law requires:

A question submitted to the electors of this state or the electors of a subdivision of this state shall, to the extent it will not confuse the electorate, be worded so that a 'Yes' vote will be a vote in favor of the subject matter of the proposal or issue and a 'No' vote will be a vote against the subject matter of the proposal or issue. MCL §168.643a

Under the proposed ballot language, a “Yes” vote for the detachment of property from the city to a township gathers the “Yes” from a separate and distinct jurisdiction whose separate proposition is to detach property from the City into a separate and distinct township. Not only does this violate §6 of the HRCA and Michigan’s election law, the vote on one detachment which “may gather votes for the other” is in violation of the principles recognized by the Michigan Supreme Court in Vander Laan, supra.

Lastly, Section 8 of the HRCA specifically provides “(t)he question of ...change of boundaries shall be submitted to the qualified electors of the district to be affected at the next general election.” MCL 117.8. The election statute defines a qualified elector to mean “any person who possessed the qualifications of an elector as prescribed in Section 1 of Article 2 of the state constitution and who has resided in the city or township 30 days.” MCL 168.10 It goes on to read that a person shall also “meet the requirements of local residence provided by law,” in order for that person to be able to vote. General Law Township Act, MCL 41.1. If one were to read the election law in conjunction with the HRCA, a qualified elector could only vote on detachment of territory to the township in which the qualified elector resides. They would not be qualified to vote on the detachment of any territory to any other township.” To permit otherwise would be a violation of Section 1 of Article 2 of the State Constitution.

### **Equal Protection**

If there is a referendum held on the annexation of territory from a township into a city, Section 9 of the HRCA states that the vote must be tabulated separately. The qualified electors in the city, in the township and in the district to be affected are all counted separately. If the majority of votes in any one of the three areas do not approve the annexation, the annexation does not go through. With detachments, the vote is taken in the city and in the township and then combined together. A majority of all votes cast together determines the outcome of the election.

If there is one petition for one ballot with several township populations involved, the odds tilt highly in favor of the Townships winning the election. This issue was addressed by the Supreme Court in Cook v Kent County Board of Canvassers, 190 Mich 149, 155 NW 1033 (1915).

In Cook, the Supreme Court reviewed the action of the Kent County Canvassers in approving annexation into the City of Grand Rapids of property located in Wyoming and Paris Townships. The voters in Paris Township and the City voted in favor of the annexation, and the voters in Wyoming Township voted against it. The court examined the language found in the Home Rule Cities Act pertaining to annexation which defined “the district to be affected,” which is the same statutory language at issue here. It was the contention of the plaintiff in Cook that the “district to be annexed” meant the portion of each township to be annexed and that the statutory requirement of a majority vote in the “district to be annexed” meant that a majority of each township to be annexed must vote affirmatively before annexation could follow. The court agreed with the plaintiff and stated:

While it may be conceded that the language of the statute, without straining, will support either of the foregoing views, we are of the opinion that the contention of the plaintiff should be sustained as being more nearly consonant with justice and with the principles of local self-government which have been so frequently enunciated by this court. The evils which would flow from a contrary holding seem to be very well illustrated in the case before us. That portion of Paris Township proposed to be annexed is but 160 acres in area. It immediately adjoins the city of Grand Rapids upon the south, and it is apparently more densely populated than the portion of Wyoming Township which adjoins it. The territory proposed to be taken from Wyoming Township consists of about 800 acres. . . . To permit the favorable minority in that portion of Paris Township to be annexed to overcome the averse majority in the portion of Wyoming Township to be annexed would, in our opinion, be contrary to the spirit of section 9 and, we believe, under a fair construction of the language, it is likewise contrary to the express terms. Id., pp 154-155

Similarly, in this case, allowing two townships with a vastly greater population combined, than either separately, to pool their votes against the City would be “contrary to the spirit” of the Act and would be an unfair construction of the Act “contrary to the express terms.”

### **Conclusion**

The petition for detachment is invalid. It relies on signatures from unqualified electors. It calls for an election in which freeholders residing within separate and distinct townships would be permitted to vote on extraterritorial matters not concerning the township in which they reside in. It would confer powers to a township which the township would not otherwise have. It would violate Section 1 of Article 2 of the Constitution of 1963. The Court of Appeals ruled correctly by indicating that the HRCA, for all of the above reasons, could not be interpreted as requested by the townships. To do so would have made the application of the detachment sections in the HRCA unconstitutional.

### **Relief**

The Amicus Curiae asks the Supreme Court to affirm the decision of the Court of Appeals and clarify the statutory language of the Home Rule Cities Act so that only qualified electors residing in a City or Township to be affected by the transfer of property may sign a petition for detachment of property and only those qualified electors living in the Township to which the Territory is to be transferred to and the residents of the City from which the property is being detached are qualified to vote in said election.

Respectfully submitted,

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Dated: January 7, 2005

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